

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
 Application of Duke :  
 Energy Ohio for Approval :  
 of a Market Rate Offer to :  
 Conduct a Competitive :  
 Bidding Process for : Case No. 10-2586-EL-SSO  
 Standard Service Offer :  
 Electric Generation :  
 Supply, Accounting :  
 Modifications, and Tariffs:  
 for Generation Service. :

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PROCEEDINGS

before Ms. Katie Stenman and Ms. Christine M.T.  
 Pirik, Hearing Examiners, at the Public Utilities  
 Commission of Ohio, 180 East Broad Street, Room 11-A,  
 Columbus, Ohio, called at 9:00 a.m. on Tuesday,  
 January 4, 2011.

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APPEARANCES:

Ms. Amy B. Spiller  
Associate General Counsel  
Duke Energy Corporation  
and Ms. Elizabeth H. Watts  
Assistant General Counsel  
Room 2500, ATII  
139 East Fourth Street  
Cincinnati, Ohio 45201-0960

Mr. Rocco O. D'Ascenzo  
Senior Counsel  
Duke Energy Business Services, Inc.  
139 East Fourth Street  
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On behalf of Duke Energy-Ohio.

Vorys, Sater, Seymour & Pease, LLP  
By Mr. M. Howard Petricoff  
and Mr. Stephen M. Howard  
52 East Gay Street  
Columbus, Ohio 43216-1008

On behalf of Constellation NewEnergy,  
Constellation Commodities Group, and the  
Retail Energy Suppliers Association.

Mr. Mark A. Hayden  
FirstEnergy  
76 South Main Street  
Akron, Ohio 44308

On behalf of FirstEnergy Solutions Corp.

McNees, Wallace & Nurick, LLC  
By Mr. Samuel C. Randazzo  
And Mr. Joseph E. Olier  
Fifth Third Center, Suite 1700  
21 East State Street  
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On behalf of Industrial Energy Users of  
Ohio.

APPEARANCES (continued):

Janine L. Migden-Ostrander  
Ohio Consumers' Counsel  
By Ms. Ann M. Hotz  
Ms. Jody M. Kyler  
and Mr. Richard C. Reese  
Assistant Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

On behalf of the residential customers  
of Duke Energy-Ohio.

Ms. Colleen L. Mooney  
And Mr. David C. Rinebolt  
231 West Lima Street  
Findlay, Ohio 45839-1793

On behalf of Ohio Partners for Affordable  
Energy.

Chester, Willcox & Saxbe, LLP  
By Mr. John W. Bentine  
and Mr. Mark S. Yurick  
65 East State Street, Suite 1000  
Columbus, Ohio 43215-4213

On behalf of Kroger Company.

Boehm, Kurtz & Lowry  
By Mr. David F. Boehm  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of Ohio Energy Group, Inc.

Richard Cordray, Ohio Attorney General  
William Wright, Section Chief  
Public Utilities Section  
By Mr. John H. Jones  
and Mr. Steven Logan Beeler  
Assistant Attorneys General  
180 East Broad Street, 6th Floor  
Columbus, Ohio 43215-3793

On behalf of the staff of the Public  
Utilities Commission of Ohio.

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1 Tuesday Morning Session,  
2 January 4, 2011.

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4 EXAMINER STENMAN: Let's go on the  
5 record. The Public Utilities Commission of Ohio has  
6 called for a hearing at this time and place case  
7 number 10-2586-EL-SSO, being In the Matter of the  
8 Application of Duke Energy-Ohio for Approval of a  
9 Market Rate Offer to Conduct a Competitive Bidding  
10 Process for a Standard Service Offer Electric  
11 Generation Supply, Accounting Modifications, and  
12 Tariffs for Generation Service.

13 My name is Katie Stenman and with me is  
14 Chris Pirik. We are the attorney examiners assigned  
15 by the Commission to hear this case.

16 At this time I would like to start by  
17 taking the appearance of the parties starting with  
18 the company and then we'll just go around.

19 MS. SPILLER: Good morning, your Honor.  
20 Amy Spiller, along with my colleagues Rocco D'Ascenzo  
21 and Elizabeth Watts on behalf of Duke Energy-Ohio,  
22 139 East Fourth Street, Cincinnati, Ohio, 45202.  
23 Also present with me is Salil Pradhan and Don Wathen  
24 from Duke Energy-Ohio.

25 MR. BEELER: On behalf of the staff,

1 Steve Beeler and John Jones, Assistant Attorneys  
2 General under Richard Cordray, Attorney General, 180  
3 East Broad Street, 6th floor, Columbus, Ohio,  
4 43215. And also here are Kim Bojko and Tami  
5 Turkenton on behalf of the staff.

6 MR. PETRICOFF: On behalf of  
7 Constellation NewEnergy, Constellation Commodities  
8 Group, and the Retail Energy Suppliers Association,  
9 Howard Petricoff and Steve Howard from the law firm  
10 of Vorys, Sater, Seymour & Pease, 52 East Gay Street,  
11 Columbus.

12 MR. HAYDEN: Good morning, your Honor.  
13 On behalf of FirstEnergy Solutions, Mark Hayden.

14 MR. RANDAZZO: Good morning, your Honors.  
15 On behalf of the Industrial Energy Users of Ohio I'd  
16 like to enter the appearance of the law firm of  
17 McNees, Wallace & Nurick, 21 East State Street,  
18 Columbus, Ohio, 43215, by Samuel C. Randazzo and  
19 Joseph Olikier. Mr. Kevin Murray is with us as well.

20 MS. HOTZ: Good morning. On behalf of  
21 the residential customers of Duke Energy-Ohio, the  
22 Ohio Consumers' Counsel, Janine Migden-Ostrander, by  
23 Rick Reese, Jody Kyler, which is K-y-l-e-r, and Ann  
24 Hotz. Thank you.

25 MS. MOONEY: On behalf of Ohio Partners

1 for Affordable Energy, David C. Rinebolt, Colleen L.  
2 Mooney, 231 West Lima Street, Findlay, Ohio.

3 MR. YURICK: Good morning, your Honors.  
4 On behalf of the Kroger Company, John W. Bentine,  
5 Mark S. Yurick from the law firm of Chester, Willcox  
6 & Saxbe, 25 East State Street, Columbus.

7 EXAMINER STENMAN: Thank you.

8 At this time are there any members of the  
9 public here to give testimony?

10 (No response.)

11 EXAMINER STENMAN: All right. There's no  
12 one here for that. Are there any procedural issues  
13 that we need to discuss at this time?

14 MS. SPILLER: Your Honor, yes. Duke  
15 Energy-Ohio has one issue. We've advised counsel for  
16 the intervenors and staff already of a witness  
17 change. Keith Trent will be adopting the testimony  
18 of James E. Rogers filed in this matter, and the  
19 question that I would kindly request guidance from  
20 the Bench is on how Mr. Trent should adopt that  
21 testimony.

22 The testimony will need to be revised  
23 certainly to correct the credentials for Mr. Trent,  
24 which are not the same credentials as Mr. Rogers. We  
25 can certainly have Mr. Trent do that from the stand

1 during the hearing that commences next week.  
 2 Alternatively, we are more than happy to circulate a  
 3 prefiled document to counsel so that they are  
 4 informed as to Mr. Trent's credentials.

5 EXAMINER STENMAN: So you're making a  
 6 motion to have Mr. Trent adopt Mr. Rogers' testimony?

7 MS. SPILLER: Yes, your Honor.

8 EXAMINER STENMAN: Are there any  
 9 responses from any of the other parties regarding  
 10 that motion?

11 (No response.)

12 EXAMINER STENMAN: At this point then, is  
 13 anyone going to have the need to depose Mr. Trent?

14 MR. JONES: Your Honors, we'd just like  
 15 to have the company show that Mr. Trent has the  
 16 qualifications to be able to adopt the testimony of  
 17 Mr. Rogers. I mean, I don't know if that's been  
 18 shown, but that's the only request that we'd make.

19 EXAMINER STENMAN: At this point I don't  
 20 think the company's had an opportunity to demonstrate  
 21 that Mr. Trent has the qualifications to adopt the  
 22 testimony of Mr. Rogers. What we would need from the  
 23 company would be a summary of Mr. Trent's  
 24 qualifications similar to what's contained in the  
 25 direct testimony for Mr. Rogers. I don't think,

1 unless there is a significant difference in his  
2 qualifications, that the testimony itself needs to be  
3 refiled with those qualifications, but we do need a  
4 list of Mr. Trent's qualifications.

5 MS. SPILLER: Certainly.

6 EXAMINER STENMAN: And I think once we  
7 see those we can make a definitive ruling on whether  
8 or not he can properly adopt Mr. Rogers' testimony,  
9 but until we have that, anything else would be  
10 premature.

11 MS. SPILLER: Certainly, your Honor, we  
12 will get that placed in the record.

13 EXAMINER PIRIK: I would think once that  
14 information is filed, which the sooner you can file  
15 that the better, then you've already made the formal  
16 motion today and parties understand what the time  
17 frame for responding to motions are, but I think in  
18 order to allow every party adequate time to review  
19 the qualifications, once you file those  
20 qualifications parties can have I think three days to  
21 respond to whether or not those qualifications are  
22 adequate or whether they have an objection to  
23 Mr. Trent adopting the testimony of Mr. Rogers.

24 So the sooner you can get those filed the  
25 sooner that can be resolved and then the first day of



1 hearing next week we can address and finalize your  
2 motion request.

3 MS. SPILLER: Thank you, your Honor. And  
4 in that regard, again, something that I believe we  
5 had shared with the parties last week, we had  
6 originally said to you in the prehearing conference  
7 that the order of witnesses as set forth in our  
8 application was largely reflective of the order of  
9 the witnesses as we would present at hearing.  
10 There's been some change, some slight modification to  
11 that in that I would expect Mr. Trent to be our final  
12 witness.

13 So that would not be -- I guess I raise  
14 that only because we originally had anticipated  
15 Mr. Rogers to be our first witness. So we anticipate  
16 moving Mr. Trent to the end of the schedule.

17 EXAMINER STENMAN: Will we be receiving a  
18 finalized witness list today after the parties meet?

19 MS. SPILLER: We are happy to confirm  
20 that. Mr. Kutik was kind enough to throw out a  
21 proposed schedule, we've got a slight modification  
22 just based upon commitments that folks have, but --

23 EXAMINER STENMAN: If you could just send  
24 out an e-mail with any modifications to that  
25 schedule.

1 MS. SPILLER: Sure.

2 EXAMINER STENMAN: It's really easy to  
3 understand the way he has that broken down, so if you  
4 would just send out a final e-mail with modifications  
5 just so we're on the same page for next week, that  
6 would be appreciated.

7 MS. SPILLER: We would be happy to do  
8 that. I think the open question is whether other  
9 counsel are also in agreement, because the schedule  
10 included intervenor witnesses as well as staff  
11 witnesses. So assuming counsel are amenable to what  
12 was proposed, we can make the modifications in  
13 respect to the Duke Energy-Ohio witnesses.

14 EXAMINER STENMAN: Okay. Hopefully  
15 that's something that can be worked out today.

16 MR. RANDAZZO: If I might be bold enough  
17 to suggest something. Since the company's going to  
18 go first, could I suggest that you go ahead and get  
19 your final order of witnesses out today with the  
20 understanding that the other issues will get  
21 resolved. I just think that for everybody's planning  
22 purposes it's important that we get a firm grip of  
23 what the company's order of witnesses will be so we  
24 can move expeditiously next week.

25 MS. SPILLER: And we are happy to do

1 that. I guess I just wanted to be clear if you  
2 were -- if the Bench was expecting the complete list  
3 of witnesses which would include intervenors and  
4 staff.

5 EXAMINER STENMAN: We were hopeful for a  
6 list that's as complete as it can possibly be, but if  
7 changes need to be made as we progress, I mean, I  
8 would expect that changes are probably going to  
9 happen as we progress through the hearing depending  
10 on the length of the witness cross-examination.

11 MS. SPILLER: Sure.

12 EXAMINER STENMAN: Everything's just  
13 estimated at this point I'm assuming.

14 MR. PETRICOFF: Your Honor, along that  
15 point, if we could, a couple of the witnesses from  
16 the intervenors are from out of state, so we need  
17 dates certain in terms of making travel plans. So if  
18 the rest of counsel could agree when we turn in the  
19 list today, maybe we could mark those which are dates  
20 certain for out-of-town travel.

21 EXAMINER STENMAN: That would be  
22 preferred, and we'll do the best we can to  
23 accommodate those needs.

24 MR. PETRICOFF: Thank you.

25 EXAMINER PIRIK: Just to be clear, the

1 expectation is that the company will coordinate that  
 2 list, and so you will talk with the intervenors and  
 3 designate those dates-certain witnesses. I  
 4 understand they're intervenor witnesses, but it's the  
 5 company's responsibility in these types of cases  
 6 where there's multiple intervenors and witnesses to  
 7 take charge of that witness list and verify the dates  
 8 certain for witnesses.

9 And if you have any questions about how  
 10 to do that or what needs to be done, I know you can  
 11 contact staff, I mean, they're familiar with the  
 12 process and they're very helpful in trying to be sure  
 13 that we have a date certain witness list.  
 14 Understanding that things may change, but the Bench  
 15 needs to know what witnesses' flight schedules are;  
 16 of course, we'll ask the day of hearing for that  
 17 particular witness.

18 But if a witness needs to fly out at  
 19 5 o'clock, all the parties need to know what that  
 20 schedule is, so usually we turn to the applicant and  
 21 the applicant is the one that is aware of schedules  
 22 or who they need to talk to about that schedule. So  
 23 it's really helpful.

24 MS. SPILLER: Okay.

25 EXAMINER STENMAN: Are there any other

1 procedural issues at this time?

2 MR. JONES: Your Honors, before we  
3 adjourn could I have just a moment, I just want to  
4 talk with counsel, Ms. Spiller, about the procedural  
5 schedule for a second. Could I just have a moment?

6 EXAMINER STENMAN: Sure.

7 While they're speaking, we had I think  
8 some people join us. Does anyone else need to make  
9 an appearance?

10 MR. BOEHM: Yes. Thank you, your Honor.  
11 On behalf of the Ohio Energy Group I'm David Boehm of  
12 the law firm of Boehm, Kurtz & Lowry.

13 MR. JONES: Thank you, your Honors.  
14 There's nothing further. Thank you.

15 EXAMINER STENMAN: Okay. If there's  
16 nothing else to come before us, then we will recess  
17 and reconvene on January 11th, 2011, at 9 a.m.  
18 Thank you.

19 MS. SPILLER: Thank you, your Honor.

20 (The hearing concluded at 9:15 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, January 4, 2011, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered  
Diplomate Reporter and CRR and  
Notary Public in and for the  
State of Ohio.

My commission expires June 19, 2011.

(MDJ-3770)

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Summary: Transcript Transcript of Duke Energy Ohio for Approval of a Market Rate Offer hearing held on 01/04/11. electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.